



PLANNING COMMISSION SYNOPSIS

July 24, 2014

CALL TO ORDER

Chairperson Nordstrom called the Planning Commission meeting to order at 6:00 p.m. in the City Council Chambers of the Bloomington Civic Plaza.

COMMISSIONERS PRESENT: Nordstrom, Willette, Spiess, Batterson, Fischer, Bennett, Goodrum

COMMISSIONERS ABSENT:

STAFF PRESENT: Markegard, Fields, Centinario, Farnham, Schmidt, Desrude, Hiller

Chairperson Nordstrom led the attendees in the reciting of *The Pledge of Allegiance*.

ITEM 3

6:32 p.m.

CASE:	10934ABC-14
APPLICANT:	Robert Schoenborn
LOCATION:	9604 and 9608 Humboldt Avenue
REQUEST:	1) Variance for phased surfacing plan; (Case 10934A-14); 2) Conditional Use Permit for open storage as a primary use (Case 10934B-14); and 3) Final Site and Building Plans for an open storage lot (Case 10934C-14)

SPEAKING FOR THE APPLICANT:

William Griffith, Attorney, representing Robert Schoenborn
Robert Shoenborn, applicant

SPEAKING FROM THE PUBLIC:

Charles Kulbeth (9632 Humboldt)
Tammy Kulbeth (9632 Humboldt)

PUBLIC HEARING DISCUSSION:

Fields identified the parcel and the surrounding land uses. He explained the proposed site is made up of two parcels, 9604 and 9608 Humboldt Avenue South. The north parcel received a Conditional Use Permit for open storage in 1975. The south parcel is currently a vacant, unimproved lot. The applicant proposes to use both properties for open storage of motor vehicles, construction equipment, and other items.

Fields stated there are currently two accessory structures on the site, and both are proposed to be demolished with this project. All future structures must meet City Code requirements including but not limited to setbacks, exterior materials and parking. The applicant is proposing an eight foot high fence, on top of a three foot high berm, for a total of 11 foot high screening around the site. This height is required for screening of all equipment and materials on the site. Staff understand that certain vehicles, such as trucks and trailers, may exceed the screening height, however all materials must be fully screened.

Fields stated the storage lot will have driveway accesses on both Humboldt Avenue and 96th Street. The applicant has not supplied a storage layout for the parking surface. It will be required that emergency vehicles can enter and exit the site, with an unobstructed 20-foot fire lane. Gates are proposed at both the Humboldt Avenue and 96th Street entrances along the property line. The applicant may not choose to use all the existing curb cuts on the two sites. While this might be sufficient for individual cars or light pick-up trucks, the storage lot will be used by larger trucks with trailers. These vehicles will either need to park in the street to open the gate or be located partially on private property and partially in the street. To avoid street circulation issues on 96th Street, staff believes the access gates should be located within the lot. The location of the gate on Humboldt Avenue is sufficient due to there being enough space between neighboring properties for vehicles to temporarily stop to unlock a gate before proceeding into the site.

Fields stated stormwater would be managed via a stormwater pond, located on the west side of the storage lot. Stormwater rate and quality control plans have been submitted and are being reviewed by the City Engineer. Since this site is located within the Nine Mile Creek Watershed District, an additional permit will be required.

Fields stated the applicant has not submitted a landscape plan or lighting plan. The site is required to have 29 trees and 71 shrubs to meet the City Code requirement. Security lighting is not required for the entire site since the open storage is within a security gate; however lighting is required for all entrances to the site at 1.5 foot candles. Staff encourages the installation of lighting to enhance security. Conditions of approval has been added to ensure the landscaping and lighting meets all code requirements prior to building permits being issued.

Fields stated the applicant has submitted a phased surfacing plan. He explained that in order to reduce airborne dust, reduce mud and rock on nearby streets and to contain potential chemical spills, the City Code requires parking areas to be paved. The surface of the 9604 parcel is gravel, which is nonconforming, and the surface of the 9608 parcel is undeveloped. The applicant has submitted a variance application to allow a phased surfacing plan over a period of six years. There would be three phases, and approximately one third of the property would be paved every two years.

Fields stated the variance is temporary, as once the six year period is complete, the site will be code complying. The applicant believes the phased plan is necessary because the heavy equipment, and materials stored on site will result in an advanced rate of pavement degradation. The applicant shared concerns that re-grading the lot would cause the ground to settle over the next few years. Paving the site before it is fully compacted could result in cracks and dips in the surface. The applicant also believes by phasing the initial pavement, each portion of the property will then require maintenance at different times, allowing the equipment to be relocated on-site and not be stored off-site. Since the site will eventually come into full compliance with City Code, Staff supports the variance to temporarily allow a phased surfacing plan.

Fields stated staff received an email correspondence from a neighboring business owner. The letter was included in the Planning Commission handouts for tonight meeting. The property owner's concerns are listed below.

- Property values may be affected by the sight and location of towed, abandoned, and junk cars, trucks and other type equipment.
- A higher amount of traffic may be on the streets in the area.
- There may be higher amounts of mud and dirt that is tracked onto the street from the towed or driven vehicles off the lot.
- The stored vehicles may leak oil, antifreeze and other contaminants leaching into the soil from the stored vehicles.

- There may be contamination of other surrounding properties through the water table, resulting in EPA questions, much lower property values and the possible inability to sell the property.

Fields stated staff recommends approval of a variance for a phased surfacing plan subject to the conditions listed in the staff report and staff recommends approval of a Conditional Use Permit and Final Site and Building plans for open storage as a primary use subject to the conditions and code requirements listed in the staff report. He stated he is available for questions and comments from the Commission and the applicant and their legal representative are also present.

Goodrum asked for verification from staff that the applicant is aware that the phased surfacing plan is part of this application and that not following the phasing plan could result in the revocation of the Conditional Use Permit (CUP) for open storage. Fields stated if the phased plan is not followed the City could impose fines and/or revocation of the CUP.

Batterson asked for clarification on the phased surfacing plan as far as surfacing material. Fields explained the phase 2 and 3 portions of the plan would temporarily be gravel, however all phases will be asphalt after the phasing plan is complete. Batterson asked staff to comment on the 6-year phased plan stating that the 6-year period seems like a long time. Fields stated the applicant presented the 6-year phased plan to staff. He explained the applicant shared concerns that re-grading the lot would cause the ground to settle over the next few years. Paving the site before it is fully compacted could result in cracks and dips in the surface. The applicant also believes by phasing the initial pavement, each portion of the property will then require maintenance at different times, allowing the equipment to be relocated on-site and not be stored off-site. Fields stated perhaps the applicant could expand on the reasoning when they make their presentation.

Willette asked staff to comment on standards, if any, for the thickness of asphalt or pavement for this type of use. Markegard stated there are no specific standards above the typical asphalt standards, the strength or depth of the asphalt is up to the applicant to determine for the type of operation they intend to have on the site. Desrude stated a parking lot permit will need to be approved by the City Engineer. The applicant will be asked to do a pavement design to show that the strength will be sufficient.

Nordstrom asked for clarification on the lighting requirements for the site. Fields stated that since the site will be secured, lighting will only be required at the entrances of the site and will need to be done right away.

Bill Griffith introduced himself and stated he is representing Chief's Towing and the owner Robert Shoenborn. He stated Chief's Towing has worked in the City and with the City for a long time and provides a service that often times goes unnoticed until you need a tow on a cold, wintery, night. The application is really to allow the combination of these two sites. Griffith noted that one of the sites is already used for open storage for landscaping materials and equipment which is very heavy. He commented many communities allow open storage of heavy equipment to be on class five gravel for this very reason, Bloomington does not. Griffith state one benefit is that the site will get cleaned up. (broken down fence, very little landscaping, no stormwater, no lighting) Griffith stated the properties will be Code compliant.

Charles and Tammy Kulbeth introduced themselves and stated many of their concerns have been addressed by the staff report, the presentation by the applicant's representative, and the questions from the Commission. Charles Kulbeth expressed concern that Chief's is using the 9612 Humboldt Avenue lot (owned by Robert Schoenborn) for open storage of vehicles and materials. He expressed a concern that materials and vehicles are being stored on the 9612 Humboldt lot, along their north property line. He explained that if trees located on their property were to fall on the equipment/vehicles, they may be

held liable for damages. He requested the storage be kept to the open storage lots identified in this application or at least on the northerly side of the 9612 Humboldt lot.

Nordstrom noted the 9612 Humboldt Avenue parcel is not part of this application and asked staff to comment on the concern raised. Fields stated he did make a site visit and can confirm the concerns raised by the Kulbeth's. He explained the vehicles the Kulbeth's are referring to do appear to be in violation of the City Code. Charles Kulbeth stated they have contacted the City's Environmental Health Division and filed a complaint, but nothing has been done at this time. He stated he directly contacted Chief's Towing and the vehicles were removed, but have reappeared and are again currently stored on the 9612 parcel. Mr. Kulbeth also stated he is concerned these vehicles may be leaking chemical fluids onto the pavement that could potentially be harmful. He explained there was a recent incident where at 2:00 a.m. they were awoken by the sound of heavy machinery and the shaking of their home. They described a situation where heavy sheets of metal were being loaded on one of the trucks mentioned earlier. Mr. Kulbeth stated he went outside to investigate and watched a forklift load the truck with heavy metal. Once he was observed, they shut off their lights and the trucks left the site. Tammy Kulbeth added they have children and the noise was excessive and is too much.

Nordstrom stated he would like to detach this from the agenda item, but wanted to make sure the Kulbeth's get some satisfaction out of this and he was glad the concerns were expressed. Nordstrom directed staff to take the Kulbeth's concerns to the proper division within the City for review. Fields took the Kulbeth's contact information and stated he would follow up on the issue the following morning. Nordstrom added that the Kulbeth's could express their concerns at the public comment period at any City Council meeting and suggested they contact their City Council representative with their concerns.

Charles Kulbeth stated he is very happy the two lots are proposed to be improved as both parcel need a lot of work. He asked if there was a timeframe in which the proposed work would begin. Nordstrom stated the Commission's recommendation will be considered at the August 4, 2014 City Council meeting. Fields added that if the City Council were to approve the CUP, the applicant would have one year to begin implementation or the CUP would expire.

Robert Shoenborn introduced himself and explained he owns all three of the lots being talked about this evening. He stated he understands why the Kulbeth's are angry and explained one of his manager's towed a vehicle that was blocking in one of his stored vehicles on the 9612 parcel during a loud party being held at the Kulbeth's home. He stated the car was returned at no charge the following day. He stated the Kulbeth's home is located in the I-3 Zoning District and is not residential zoned. Shoenborn explained the noise incident, as described by the Kulbeth's, happened the other night when a semi hauling steel was involved in an accident on I-35W near 110th Street, and was ordered by the Highway Patrol to be towed off the interstate. He stated it is Chief's Towing duty to do this type of work and clean up the mess so that the interstate could re-open. He stated it was himself who was operating the forklift at 2 a.m., loading the damaged steel to a second semi so the product could be delivered. He stated he was just finishing the job when he noticed the neighbor (Charles Kulbeth). He assured the neighbors that no contaminated substance was or has been leaking from the vehicles stored in the 9612 Humboldt Avenue parcel and that simply was condensation from the A/C units of the vehicles. Shoenborn stated he would like conflict to be resolved as soon as possible.

Charles Kulbeth added the loud party referred to be Shoenborn was his family members and a few others sitting around a fire pit in his backyard. The vehicle that was towed was curbed up next to the white truck referred to previously and if they wanted the vehicle moved they simply could have asked. He stated he was not aware of the freeway incident regard the truck hauling steel, this was the first he had heard of it. He stated he just wants to be a good neighbor and was concerned about liability.

Nordstrom stated it is important to continue that both parties work through the issues to resolve the concerns.

The public hearing was closed via a motion.

Batterson stated he is very happy to see this site cleaned up and that there will be a fence and berm around it for screening. He stated he is not excited about the phasing of the paving, but understands the reasoning for it. The duration of the phasing is longer than what he would prefer, but will support the application and is looking forward to seeing the site improved.

Nordstrom stated these items will be heard at the August 4, 2014 City Council meeting.

ACTIONS OF THE COMMISSION:

M/Spiess, S/Willette: To close the public hearing. Motion carried 7-0.

M/Spiess, S/Batterson: In Case 10934A-14, having been able to make the required findings, I move the Planning Commission recommend approval of a variance for phased surfacing plan at 9604 and 9608 Humboldt Avenue subject to the 2 conditions of approval listed in the staff report. Motion carried 7-0.

M/Spiess, S/Willette: In Case 10934BC-14, having been able to make the required findings, I move the Planning Commission recommend approval of a Conditional Use Permit and Final Site and Building Plans for open storage as a primary use at 9604 and 9608 Humboldt Avenue subject to the 15 conditions of approval and 4 Code requirements listed in the staff report. Motion carried 7-0.

CONDITIONS OF APPROVAL RECOMMENDED BY THE COMMISSION:

The variance for a phase surfacing plan located at 9604 and 9608 Humboldt Avenue South (Case 10934A-14) is subject to the following conditions of approval:

- 1) The phased surfacing plan must occur as follows:
 - A. Phase 1: Within two years of the approval date, the area identified as “Proposed Blacktop” on the Proposed Site and Grading Plan must be surfaced with concrete or asphalt with concrete curbs, and the driveways accessing the property from the right-of-way must also be surfaced with concrete or asphalt. This area accounts for approximately 1/3 of the entire storage area. During Phase 1, the stormwater improvements, landscaping, and screening must be installed and the remaining 2/3 of the storage lot area must be maintained with an all-weather surface consisting of Class 5 gravel.
 - B. Phase 2: Within four years of the approval date, an area consisting of approximately 1/3 of the storage area, contiguous with and immediately west of Phase 1, must be surfaced with concrete or asphalt with concrete curbs. The remaining 1/3 of the storage lot area must continue to be maintained with an all-weather surface consisting of Class 5 gravel.
 - C. Phase 3: Within six years of the approval date, the remaining approximately 1/3 of the storage lot, immediately west of the area surfaced in Phases 1 and 2 and adjacent to the stormwater retention pond, must be surfaced with concrete or asphalt with concrete curbs, with an exception to curbing in areas approved for stormwater drainage by the

City Engineer. At this time, the entire storage lot will be surfaced with concrete or asphalt, with concrete curbs and in compliance with the surfacing requirements under the City Code.

- 2) The variance is limited to the areas as shown in case file 19034ABC-14.

The conditional use permit for open storage as a primary use at 9604 and 9608 Humboldt Avenue South (Case 10934BC-14) is subject to the following conditions of approval being satisfied prior to the issuance of grading or parking lot permits:

- 1) The site plans must be revised to show adequate distance between the 96th Street access gate and the street as approved by the City Engineer;
- 2) Grading, drainage, utility and erosion control plans be approved by the City Engineer;
- 3) A Nine Mile Creek Watershed District Permit shall be provided;
- 4) Erosion control measures be in place;
- 5) A Stormwater Management Plan must be provided that includes a maintenance plan to be signed by the property owner and filed of record with Hennepin County;
- 6) A National Pollutant Discharge Elimination System (NPDES) construction site permit and a Storm Water Pollution Prevention Plan (SWPPP) must be provided if greater than one acre is disturbed;
- 7) A screening fence must be installed at an equal or greater height than the material and equipment stored on the site and outside of the landscape yard;
- 8) The lot must be secured against unlawful entry and security measures be maintained in good repair as approved by the Fire Marshal and Bloomington Crime Prevention Unit;
- 9) Fire lanes must be provided and maintained as approved by the Fire Marshal;

and subject to the following additional ongoing conditions:

- 10) The applicant must follow the phased surfacing plan approved in conjunction with Case 10934A-14;
- 11) All loading and unloading must occur on site and off public streets;
- 12) Alterations to utilities be at the developer's expense;
- 13) All permitted storage must remain completely fenced and the fence must be maintained in good repair;
- 14) Storage of salvage, inoperable vehicles, refuse, and use of shipping or cargo containers, trailers or similar receptacles for storage is prohibited; and
- 15) All permitted storage must be maintained in a neat and orderly manner within the paved area as shown on the approved plans in Case 10934ABC-14.

And, while the use and improvements must comply with all applicable local, state and federal codes, the applicant should pay particular attention to the following Code requirements:

- 1) Prior to issuance of permits, a landscape plan must be approved by the Planning Manager or designee (Sec 19.52);
- 2) Prior to issuance of permits, an Erosion Control Bond must be provided (Sec.16.05(b));
- 3) Prior to issuance of permits, a site security lighting plan satisfying the requirements of City Code Section 21.301.07 must be approved by the Planning Manager or designee; and
- 4) Poured-in-place concrete curbs must be provided on the perimeter of the lot (Sec 19.64).